

11175 PLM-1

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-194507

**DATE:** August 20, 1979

**MATTER OF:** Nuclear Regulatory Commission - [Claim for expenses incurred appealing denial of security clearance] AGC000067

**DIGEST:** Applicant for employment with NRC successfully challenged adverse information contained in security investigation file. His claim for legal fees and expert witness fees and expenses may not be allowed in absence of specific statutory authority and where representation of applicant was not in the Government's interest.

This decision is in response to a request from the Nuclear Regulatory Commission (NRC), concerning the claim of an individual who is now employed by the NRC for reimbursement of legal fees and psychiatric expert fees and expenses incurred by him in successfully appealing the denial of a security clearance.

**BACKGROUND**

The report from the NRC states that the individual applied for employment with the NRC and was offered a position contingent on his receiving a security clearance. Following a background investigation and an interview, the individual voluntarily submitted to a psychiatric examination. He was subsequently advised by the NRC that there was substantial doubt that he would be granted a security clearance. At the individual's request, a hearing was held before NRC's Personnel Security Board under procedures set forth in 10 C.F.R. §§ 10.20 et seq. The Board recommended that the security clearance be denied. The individual appealed to NRC's Personnel Security Review Board which overturned the prior recommendation and, upon the recommendation of the Review Board, the Executive Director for Operations at NRC granted the security clearance.

The individual filed a claim with the NRC for reimbursement of legal fees and the fees and expenses of six psychiatrists which total more than \$12,000. In support of his claim he argues that he was forced to challenge the findings of the NRC psychiatrists in order to obtain a position with the NRC as well as to retain the position he then held with a private employer which required

~~406198~~

a security clearance. The agency argues that the individual has an appealing case for reimbursement where he committed his own money to overturn an initially erroneous Government determination which would have jeopardized his current employment as well as his future career opportunities.


### DISCUSSION

Generally, we have held that the hiring of an outside attorney to represent an employee is a private matter between the attorney and the client, and that reimbursement of attorney's fees may not be allowed in the absence of express statutory authority. See Norman E. Guidaboni, 57 Comp. Gen. 444 (1978); Manzano and Marston, 55 id. 1418 (1976), and decisions cited therein. This principle applies to claims for attorneys fees incurred by applicants for Federal employment as well as to claims for expert witness fees and expenses. We know of no statute specifically authorizing reimbursement of either such expense in connection with proceedings related to the issuance of security clearances.

In the absence of specific authority for payment of attorneys fees, we have held that the Government may provide an employee with representation for private litigation when the interest of the United States is at stake along with the employee's personal interest. B-130441, April 12, 1978. We have recognized that the Government has an interest in judicial proceedings brought by a private party against a Federal employee in his individual capacity arising out of conduct within the scope of his Federal employment, and that the Government may properly provide representation in such proceedings. See Securities and Exchange Commission, B-193536, June 18, 1979 (58 Comp. Gen. \_\_\_\_), and decisions cited therein. That authority does not extend to a situation such as is involved in the present case where the agency allowed the applicant an opportunity for a hearing and further appeal to challenge information which would result in his denial of a security clearance. The individual here involved was not defending conduct within the scope of his employment against charges pressed by an outside party. As in the Securities and Exchange Commission case, an individual's challenge to agency action denying issuance of a security clearance is not a case in which it is in the interest of the Government to provide the employee or applicant with legal counsel. Compare B-127945, April 5, 1979.

B-194507

Accordingly, we find no basis upon which the NRC may allow reimbursement of legal fees and psychiatric expert fees and expenses.

  
Deputy Comptroller General  
of the United States